

2013 DRAFTING REQUEST

Bill

Received: 6/3/2013	Received By: rnelson
Wanted: As time permits	Same as LRB:
For: Scott Krug (608) 266-0215	By/Representing: Randy T
May Contact:	Drafter: rnelson
Subject: Courts - immunity liability	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Krug@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Sport shooting range immunity and nuisance action restrictions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 7/9/2013			_____			
/P1	rnelson 10/7/2013	scalvin 7/22/2013	jfrantze 7/22/2013	_____	lparisi 7/22/2013		
/P2	rnelson 11/6/2013	scalvin 10/14/2013	jfrantze 10/14/2013	_____	srose 10/14/2013		
/P3	rnelson	scalvin	jmurphy	_____	srose		

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	12/5/2013	11/20/2013	11/21/2013	_____	11/21/2013		
/1	rnelson 1/16/2014	scalvin 12/9/2013	rschluet 12/9/2013	_____	mbarman 12/9/2013	lparisi 12/10/2013	
/2		scalvin 1/16/2014	rschluet 1/16/2014	_____	sbasford 1/16/2014	sbasford 1/16/2014	

FE Sent For:

↪ Not Needed

<END>

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Returned
01-15-14**

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[Handwritten signatures and initials over the Drafting History table]

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FE Sent For:	<i>11 sac</i>	<i>11 sac</i>
	<i>12/09/2013</i>	<i>12/09/2013</i>

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1/?	rnelson	1P1 sac 07/19/2013		<i>Km</i> <i>22</i>			
<p>FE Sent For:</p> <p><i>10/14</i></p> <p><END></p>							

Nelson, Robert

From: Hurley, Peggy
Sent: Thursday, May 30, 2013 12:32 PM
To: Nelson, Robert
Subject: FW: Email from Rep. Scott Krug staff-drafting request
Attachments: Drafting Instructions for 2013 Range Protection - revised 5-5-13.docx

From: Hanaman, Cathlene
Sent: Thursday, May 30, 2013 10:33 AM
To: Hurley, Peggy; Kuczenski, Tracy
Subject: FW: Email from Rep. Scott Krug staff-drafting request

Peggy and Tracy:

I think this is your draft.

Peggy, I could take the one Mike Gallagher just sent.

-C

From: Thorson, Randy
Sent: Thursday, May 30, 2013 10:29 AM
To: Hanaman, Cathlene
Subject: Email from Rep. Scott Krug staff-drafting request

Good morning Cathlene,

Per my recent voicemail, you will find the "range protection" language attached.

Hopeful that you can draft or forward to the appropriate drafting attorney.

If you have any questions feel free to contact me.

Thank you for your assistance.

Sincerely,

Randy Thorson
Research Assistant to
Scott Krug
State Representative
72nd Assembly District

- 1379/1
P 9-10
Drafting instructions for 2013 Range Protection Act

ammunition
? rounds - projectiles?

All in Chapter 895.527

(3) Amend to read as follows: A person who owns or operates a sport shooting range is not subject to an action for nuisance or to any zoning conditions or regulations related to noise, non-conforming use, or any other zoning regulations either state or local, and no court may enjoin or restrain the operation or use of a sport shooting range on the basis of noise, non-conforming use or any other state or local zoning condition or regulation.

RD(Y) - (9)(a)

(4) Include 59.692 in the list - Shoreland Zoning

(b)

(4) and (5) update the dates only if necessary - otherwise leave dates as is

New Section (8)

(a) Notwithstanding any other provision of law, any public or private owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state shall have immunity from lawsuits and other legal actions from the state and any of its agencies, special purpose districts, or political subdivisions for any claims of any kind associated with the use, release, placement, deposition, or accumulation of any projectile in the environment, on or under that sport shooting or training range, or any other property over which the range has an easement, leasehold, or other legal right of use.

X (b) Nothing in this act is intended to impair or diminish the private property rights of owners of property adjoining a sport shooting or training range.

(c) PREEMPTION. Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.

New Section (9)

TEMPORARY AND PERMANENT CLOSURE OF SHOOTING RANGES.

later (a) Closure. A shooting range that is in compliance with generally accepted shooting range performance standards shall not be forced to permanently close or permanently cease any activity related to the primary use of the shooting range unless the range or activity is found to be a clear and immediate safety hazard by a court of competent jurisdiction. In any action brought to compel the permanent closure of any range in compliance with shooting range performance standards or to permanently cease any activity related to the primary use of the shooting range,

sports
sport
sport shooting
generally accepted sport
sport
activity

the incident shall immediately be reported to the local law enforcement agency. That agency shall involving of an investigation

there is a rebuttable presumption that the range or activity is not a clear and immediate safety hazard.

For purpose of this chapter, Clear and Immediate Safety Hazard is defined as: imminent danger which is an immediate and real threat of harm, which could reasonably be expected to cause death or serious physical harm to any person, as determined by a National Rifle Association Range Technical Team Advisor. *I'm sure*

161 If it is a clear and immediate safety hazard
Temporary: Where there are reported incidents of clear and immediate safety hazards as set forth below, all alleged incidents of rounds leaving the range *the incident at a sp sh range* will be investigated within 24 hours *of receiving a report!* by local officials. Only that portion of the range alleged to have a clear and immediate safety hazard may be closed during the 24 hour period investigatory period. That portion of the range shall reopen no later than 24 hours after initial report is made.

If the investigation concludes that a clear and immediate safety hazard may be present, only that portion of the range which has the alleged clear and immediate safety hazard upon it may be closed, and the remaining balance of the range which is not directly involved with an alleged incident shall remain open.

clear & immediate
If the shooting range provides evidence that the cause of a clear and immediate safety hazard can be mitigated so as to eliminate the safety hazard, the court shall not order the permanent closure of the range, or permanent ceasing of the activity found to be a clear and immediate safety hazard, unless the range operator fails after repeated attempts to implement the necessary mitigation to remove said hazard by the date that is determined reasonable by the Range Technical Team Advisor and approved by the court. All range improvements that are initiated *to remove* due to a clear and immediate safety hazard that is defined as above, may be upgraded by the most practical and least expensive solution, as recommended by a National Rifle Association Range Technical Team Advisor. *how many suggested*

later
re. to sp sh rg (b) Immunity: The shooting range, together with its officers and board and any Range Technical Team Advisor providing recommendations, is immune from closure and civil actions based solely upon the negligent actions of its users. *criminal members* Negligent use of a range by the users shall be referred to local law enforcement for possible criminal charges against the individual who violates the law. *may is not illegal* A person providing a firearms training course in good faith is immune from liability arising from any act or omission related to the course if the course is nationally or state approved.

(e) Permanent injunctions. A court may grant a permanent injunction only against a particular activity or person instead of permanently closing the range unless the court finds that the remaining operations also pose a clear and immediate safety hazard under this section and the range has been given every opportunity to correct said hazard. Any range presently closed by a

court ordered permanent injunction may reopen upon satisfying the court of jurisdiction that said hazard has been remedied.

New Section (11) – *Retroactive application*

of the state

895.527(11) WITHDRAWALS OF CLAIMS AND RECOVERY OF EXPENSES AND ATTORNEY'S FEES.--

[rev the date...]

(a) Within 90 days after the effective date of this act *becoming law*, all claims by the state and *a person* any of its agencies, special purpose districts, or political subdivisions or private individuals or groups, against sport shooting or training ranges pending in any court of this state or before any administrative agency on (insert date), shall be withdrawn. The termination of such cases shall have no effect on the defendant's cause of action for damages, reasonable attorney's fees, and costs.

(b) In any action filed in violation of this act after the effective date of this act, the defendant shall recover all expenses resulting from such action from the governmental body, person, or entity bringing such unlawful action.

New Section (12)

895.527(12) PENALTIES. Any official, agent, or employee of a county, municipality, town, special purpose district, or other political subdivision or agent of the state, while he or she was acting in his or her official capacity and within the scope of his or her employment or office, who intentionally and maliciously violates the provisions of this section or is party to bringing an action in violation of this section commits a class A misdemeanor.

New Section (13) – *Not sure if this works in our statutes.*

895.527(13) CONSTRUCTION. This act shall be liberally construed to effectuate its remedial and deterrent purposes

(3)

Nelson, Robert

To: Thorson, Randy
Subject: Sport shooting range request

Notes based on call
from Bob Welch - 819-0150
6/29 9:30 am

Randy,

I have been asked to draft the request for Rep. Krug regarding sport shooting ranges. I am having some difficulty preparing the draft based on the language submitted to us. I would appreciate your review and response to the following concerns about the draft:

1. You want to add shoreline zoning, s. 59.692, to those zoning rules that a sport shooting range is exempt from, but do not want to change the dates in that statutory section (895.527 (4)), which is currently June 18, 2010. That would mean any range in existence on June 18, 2010, would be exempt, but not one that came into existence after that date. Is that your intent?

2. The term "training range" is mentioned a number of times in your draft, but that term is not used or defined in current law. Do you want to expand the statute to include training ranges, and if so, how do you want them defined?

3. Your "Preemption" clause is unnecessary because specific language as proposed in the draft will automatically take precedent over other statutes that are less specific.

4. I am not sure of the language about "the environmental effects of projectile deposition at a sport shooting range". What is your intent? I think you want to prevent local governments to enact ordinances that would create environmental requirements above those under state law. Is that correct?

5. The language in the definition of "clear and immediate safety hazard" about having that determined by a NRA advisor is a problem because we generally do not have private parties determine this type of issue. A law enforcement officer reporting to a DA or court would be the appropriate venue to address this issue, perhaps having the NRA advisor being permitted to provide information or recommendations? We would not put the name of the organization or title of the advisor in the statutes because names change and private parties cannot determine state law; instead we could describe the functions of the organization and advisor.

6. I am not sure how an investigation of an incident can be completed within 24 hours in all situations. That seems like a very short time frame.

7. A reference to referral to local law enforcement for violations of law when there is negligent use of the range is not appropriate, since negligence is not a crime.

8. The draft prohibits a court from closing a range if it provides evidence that the cause of a clear and immediate safety hazard can be mitigated unless the range operator fails to implement the mitigation efforts "after repeated attempts". That language is vague; do you want some specific time limit on the attempts to mitigate or a number of attempts allowed before the court may close the range?

9. I do not believe that the language requiring all claims by political entities against ranges be withdrawn from any court or administrative agency is narrow enough. Are you trying to stop claims involving closing of ranges based on zoning, noise, or non-conforming use? If so, the draft should say so, otherwise this language could be interpreted to cover any action for any law violation, which I think the court, and perhaps the prosecutor, would find violated their constitutional domain.

Bob Nelson

yes, add ~~claims~~ claims
safety, related to operation
of the range

leave in, although
this may be a difficult
sell. make persons refile
their claims, so do not
say "with prejudice"

Lead poison - at X range,
not neighbors

(Bob) Welch - 819-0150

Current NRA "Range Source
Booth"

Leave - ~~the~~ withdrawal of
claims

Nelson, Robert

From: Thorson, Randy
Sent: Wednesday, August 07, 2013 4:02 PM
To: Nelson, Robert
Subject: RE: Sport shooting range request

Good Afternoon Robert,

It is my understanding that Bob Welch obtained answers to the questions below and forwarded them to you.

May I inquire as to when I may be able to expect the revised draft? Do you have any ongoing or further concerns regarding the draft?

Please let me know when you have time.

Thank you.

Randy Thorson
Research Assistant to
Scott Krug
State Representative
72nd Assembly District

From: Nelson, Robert
Sent: Monday, June 10, 2013 2:30 PM
To: Thorson, Randy
Subject: Sport shooting range request

Randy,

I have been asked to draft the request for Rep. Krug regarding sport shooting ranges. I am having some difficulty preparing the draft based on the language submitted to us. I would appreciate your review and response to the following concerns about the draft:

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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF RECORDS ACCESS
OF CIRCUIT COURT DOCUMENTS

FROM: Don Salm, Senior Staff Attorney

RE: Legislative and Judicial Authority

DATE: September 7, 2010

On May 7, 2010, the Joint Legislative Council created the Special Committee on Review of Records Access of Circuit Court Documents. The committee was directed to review how, and by whom, circuit court civil and criminal records may be accessed through the Wisconsin Circuit Court Access website (WCCA). The issues to be considered by the committee include: (a) the length of time a record remains accessible through WCCA; (b) whether accessibility of a record through WCCA should depend on how far a civil or criminal proceeding has progressed; and (c) whether records of proceedings that have: (1) been vacated or dismissed; or (2) resulted in acquittal or other form of exoneration should continue to be accessible through WCCA.

Before the Special Committee begins its deliberations, a threshold question from committee members may be whether the Legislature has any authority to act in a matter that is of substantial significance to the operation of the judicial branch of government (namely, access to electronic court documents and court documents in general). This Memo addresses that question.

BACKGROUND

Separation of Powers

The Wisconsin Supreme Court has held that the state's three branches of government (legislative, judicial, and executive) exercise both core powers and shared powers. When exercising shared powers, one branch of government may not unduly burden or substantially interfere with another branch. Further, an attempt by one branch to exercise the core power of another branch is impermissible, unless the branch having the core authority accedes to the intrusion as a matter of

*Editors -
I copied and
pasted the pertinent
parts of
this
memo
per
Bob
Please
format
correctly
(I did
not
need
it)
CMH
I re
attach
memo
old
d-106*

courtesy. In *State ex rel. Friedrich v. Circuit Court for Dane County*, 192 Wis. 2d 1, 531 N.W.2d 32 (1995), the court made the following comments:

The doctrine of separation of powers, while not explicitly set forth in the Wisconsin constitution, is implicit in the division of governmental powers among the judicial, legislative and executive branches. "The Wisconsin constitution creates three separate coordinate branches of government, no branch subordinate to the other, no branch to arrogate to itself control over the other except as is provided by the constitution and no branch to exercise the power committed by the constitution to another."

Each branch has a core zone of exclusive authority into which the other branches may not intrude....

The separation of powers doctrine was never intended to be strict and absolute. Rather, the doctrine envisions a system of separate branches sharing many powers while jealously guarding certain others, a system of "separateness but interdependence, autonomy but reciprocity." ...The undue burden or substantial interference must be proven beyond a reasonable doubt.... [See *Id.*, 531 N.W.2d at 36, 40; footnotes and citations omitted.]

In another case involving an alleged intrusion of the legislative branch into judicial functions, the Wisconsin Supreme Court stated:

...To determine whether legislation unconstitutionally intrudes upon judicial power and therefore violates the separation of powers doctrine, this court developed a three-part test. We must first determine whether the subject matter of the statute is within the powers constitutionally granted to the legislature. The second inquiry is whether the subject matter of the statute falls within powers constitutionally granted to the judiciary. If the subject matter of the statute is within the judiciary's constitutional powers but not within powers constitutionally granted to either the legislature or executive branch, the subject matter is within the judiciary's core zone of exclusive power. Any exercise of power by the legislature or executive branch within such an area is an unconstitutional violation of the separation of powers doctrine. The judiciary may recognize such an exercise of power but only as a matter of comity and courtesy, not as an acknowledgement of power.

If the subject matter of the statute is within the powers constitutionally granted to the judiciary and the legislature, the statute is within an area of shared powers. Such a statute is constitutional if it does not unduly burden or substantially interfere with another branch. [See *State v. Horn*, 226 Wis. 2d 637, 594 N.W.2d 772, 776-7 (1999); citations omitted.]

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2486/P1dn

RPN:.....

Please review the ****notes that I added after some items in the draft where I had some questions.

Section 9 of this draft, which requires courts to dismiss pending actions, clearly interferes with the powers of the judicial branch. Whether that interference is unconstitutional is a matter for the courts to decide, but including this section does raise that issue. See the attached Legislative Council memo regarding the separation of powers doctrine.

Robert Nelson
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: robert.nelson@legis.wisconsin.gov



In 2/8
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2486/P1

RPN: /:....

SAC

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

V. Note

1 **AN ACT** ^{gen cat} relating to: liability, immunity, and closure of sport shooting ranges.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 895.527 (1) of the statutes is ^xrenumbered 895.527 (1) (intro.) and amended to read:

3 895.527 (1) ^(intro.) In this section, "sport:

4 (b) ^{cc} Sport shooting range" means an area designed and operated for the use and
5 discharge of firearms.

6 History: 1997 a. 242; 2001 a. 30; 2005 a. 155; 2009 a. 371; 2011 a. 35.

SECTION 2. 895.527 (1) (a) of the statutes is created to read:

7 895.527 (1) (a) "Clear and immediate safety hazard" means an imminent
8 danger to the public, which is an immediate and real threat of harm, and which could

9 reasonable expected to cause death or serious physical injury to an individual, as
reasonably be

determined by a National Rifle Association range technical team advisor, based on the criteria established in the National Rifle Association Range Book.

SECTION 3. 895.527 (3) of the statutes is amended to read:

895.527 (3) A person who owns or operates a sport shooting range is not subject to an action for nuisance or to any state or local zoning conditions or rules, including those related to noise or nonconforming use and no court may enjoin or restrain the operation or use of a sport shooting range on the basis of noise, non-conforming use, or any other state or local zoning condition or rule.

History: 1997 a. 242; 2001 a. 30; 2005 a. 155; 2009 a. 371; 2011 a. 35.

****NOTE: The state issues rules while the federal government issues regulations, so I removed the reference to "regulation" because it is not appropriate.

SECTION 4. 895.527 (4) of the statutes, as affected by 2013 Wisconsin Act 35, is amended to read:

895.527 (4) Any sport shooting range that exists on July 16, 2013, may continue to operate as a sport shooting range at that location notwithstanding any zoning ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7), if the sport shooting range is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7) that is in effect on July 16, 2013. The operation of the sport shooting range continues to be a lawful use or legal nonconforming use notwithstanding any expansion of, or enhancement or improvement to, the sport shooting range.

History: 2013 a. 35.

SECTION 5. 895.527 (8) of the statutes is created to read:

895.527 (8) Any public or private owner, operator, employee, agent, contractor, customer, lender, insurer, or user of an sport shooting range is immune from civil liability in any action commenced by the state or its political subdivisions, or by a special purpose district, for any claims related to the use, release, placement,

1 deposition, or accumulation of any projectiles in or under the sport shooting range
2 or other contiguous real property over which the sport shooting range has an
3 easement, leasehold, or other legal right to use.

* ****NOTE: I added the word "contiguous" to limit the ^{immunity to} those properties next to the
sport shooting range. I am also concerned about the language "the sport shooting range
has an easement...". Can a sport shooting range have an easement, or does the owner of
a sport shooting ^{range,} have an easement, leasehold, etc.?

4 SECTION 6. 895.527 (9) of the statutes is created to read:

5 895.527 (9) (a) A sport ^{range} shooting range that is in compliance with generally
6 accepted sport shooting range performance standards may not be forced to
7 permanently close or permanently cease any activity related to the primary use of
8 the range unless a circuit court finds that the range or activity is found to be a clear
9 and immediate safety hazard.

LPS: correct font size
****NOTE: The definition of "clear and immediate safety hazard" requires
a determination by ^{an} NRA advisor, while this ^{paragraph} ~~subsection~~ requires a court
determination. I am not sure how to reconcile these.

10 (b) If there is ^{an} ~~a~~ ^{reported} incident of a clear and immediate safety hazard at a
11 sport shooting range involving projectiles leaving the the sport shooting range ^{to the operator of the} the
12 ^{operator} incident shall immediately ^{be} reported ^{to the} to the local law enforcement agency. That ^{related to}
13 portion of the sport shooting range alleged to have been involved in the projectiles
14 leaving the the sport shooting range may be closed for up to 72 hours, at the
15 discretion of the law enforcement agency, while the law enforcement agency
16 completes its investigation of the incident. The law enforcement agency may consult
17 a National Rifle Association range technical team advisor when determining if a
18 clear and immediate safety hazard existed at the sport shooting range. If the law
19 enforcement agency determines that a clear and immediate safety hazard existed at
20 the sport shooting range, the agency shall refer the matter to the district attorney,
21 who shall determine if ^a court action shall be commenced to temporarily close that

and the next paragraph requires a determination
by a law enforcement agency

1 portion of the sport shooting range that has the alleged clear and immediate safety
2 hazard. The remaining balance of the sport shooting range may remain open if a
3 portion of the sport shooting range is ordered closed.

****NOTE: I had to add some language because it was unclear who had the authority
to ~~temporarily~~ close a portion of the range. OK?

temporarily

4 (c) In an action brought in circuit court to permanently close a sport shooting
5 range that is in compliance with generally accepted sport shooting range
6 performance standards or in an action brought to permanently cease any activity
7 related to the primary use of a sport shooting range, there is a rebuttable
8 presumption that the range or activity is not a clear and immediate safety hazard.

9 (d) If the operator of the sport shooting range provides evidence to the circuit
10 court that the cause of a clear and immediate safety hazard can be mitigated so as
11 to eliminate the clear and immediate safety hazard, the court shall not order the
12 permanent closure of the sport shooting range or the permanent ~~ceasing~~ *cessation* of an
13 activity found to be a clear and immediate safety hazard unless the sport shooting
14 range operator, after repeated attempts, fails to implement the mitigation necessary
15 to remove the cause of a clear and immediate safety hazard. All mitigation necessary
16 to remove the cause of a clear and immediate safety hazard may be performed by the
17 most practical and least expensive solution, as recommended by a National Rifle
18 Association range technical team advisor, based on criteria established in the
19 National Rifle Association Range Book.

20 (e) A circuit court may grant a permanent injunction only against a particular
21 activity at a sport shooting range or against a particular person instead of
22 permanently closing a sport shooting range, unless the court finds that the
23 remaining operations of the sport shooting range also pose a clear and immediate

1 safety hazard and the range operator has been given every reasonable opportunity
2 to correct the hazard. Any sport shooting range that is permanently closed by court
3 order under this subsection may reopen upon satisfying the court that issued the
4 order that the clear and immediate safety hazard has been remedied.

5 **SECTION 7.** 895.527 (10) of the statutes is created to read:

6 895.527 (10) (a) A sport shooting range, an operator, owner, officer or board
7 member of a sport shooting range, and any National Rifle Association range
8 technical team advisor that provided recommendations regarding the operation of
9 a sport shooting range, are immune from any civil action based solely on the
10 negligent action of a user of the sport shooting range.

11 (b) The operator of a sports shooting range shall refer any criminal negligent
12 use of a sports shooting range to the local law enforcement agency for possible
13 charges against the individual who allegedly commits the crime.

14 (c) Any person who provides a firearms training course in good faith at a sports
15 shooting range is immune from civil liability ^{for} ~~from~~ any act or omission related to the
16 course if the course is approved by a national or state organization.

****NOTE: Is there any way to limit or define what types of national or state
organizations can provide firearm training course approval?

17 **SECTION 8.** 895.527 (11) of the statutes is created to read:

18 895.527 (11) This section does not impair or diminish the private property
19 rights of owners of property adjoining a sports shooting range.

20 **SECTION 9.** 895.527 (12) of the statutes is created to read:

21 895.527 (12) (a) Within 90 days after the effective date of this subsection [LRB
22 inserts date...] all claims by the state or its political subdivisions, by a special
23 purpose district, or by any other person, related to the operation or safety at a sports

1 shooting range, pending in court or an administrative agency, including actions
2 based on noise, zoning, or nonconforming use, shall be dismissed without prejudice
3 by the court or administrative agency. The dismissal of a claim under this paragraph
4 shall not effect the defendant's cause of action for damages, reasonable attorney fees,
5 or costs.

6 (b) If an action is commenced in violation of this section, the court shall order
7 the governmental body or person who commenced the action to pay all of the
8 defendant's expenses resulting from the commencement of the action.

9 **SECTION 10.** 895.527 (13)[✓] of the statutes is created to read:

10 895.527 (13) Any official, agent, or employee of the state or its political
11 subdivisions, or of a special purpose district, while he or she was acting in his or her
12 official capacity and within the scope of his or her employment or office, who willfully
13 and maliciously violates this section or who is party to bringing an action in violation
14 Of this section is guilty of a Class A misdemeanor.

15 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2486/P1dn

RPN:/:.....

Sac

- date -

Please review the ****notes that I added after some items in the draft where I had some questions.

Section 9 of this draft, which requires courts to dismiss pending actions, clearly interferes with the powers of the judicial branch. Whether that interference is unconstitutional is a matter for the courts to decide, but including this section does raise that issue. In a Legislative Council memo dated September 7, 2010, Dan Salm, Senior Staff Attorney, wrote the following to the members of the Special Committee on Review of Records Access of Circuit Court Documents regarding the separation of powers doctrine:

On May 7, 2010, the Joint Legislative Council created the Special Committee on Review of Records Access of Circuit Court Documents. The committee was directed to review how, and by whom, circuit court civil and criminal records may be accessed through the Wisconsin Circuit Court Access website (WCCA). The issues to be considered by the committee include: (a) the length of time a record remains accessible through WCCA; (b) whether accessibility of a record through WCCA should depend on how far a civil or criminal proceeding has progressed; and (c) whether records of proceedings that have: (1) been vacated or dismissed; or (2) resulted in acquittal or other form of exoneration should continue to be accessible through WCCA.

Before the Special Committee begins its deliberations, a threshold question from committee members may be whether the Legislature has any authority to act in a matter that is of substantial significance to the operation of the judicial branch of government (namely, access to electronic court documents and court documents in general). This Memo addresses that question.

BACKGROUND

Separation of Powers

The Wisconsin Supreme Court has held that the state's three branches of government (legislative, judicial, and executive) exercise both core powers and shared powers. When exercising shared powers, one branch of government may not

unduly burden or substantially interfere with another branch. Further, an attempt by one branch to exercise the core power of another branch is impermissible, unless the branch having the core authority accedes to the intrusion as a matter of courtesy. In *State ex rel. Friedrich v. Circuit Court for Dane County*, 192 Wis. 2d 1, 531 N.W.2d 32 (1995), the court made the following comments:

The doctrine of separation of powers, while not explicitly set forth in the Wisconsin constitution, is implicit in the division of governmental powers among the judicial, legislative and executive branches. "The Wisconsin constitution creates three separate coordinate branches of government, no branch subordinate to the other, no branch to arrogate to itself control over the other except as is provided by the constitution and no branch to exercise the power committed by the constitution to another."

Each branch has a core zone of exclusive authority into which the other branches may not intrude....

The separation of powers doctrine was never intended to be strict and absolute. Rather, the doctrine envisions a system of separate branches sharing many powers while jealously guarding certain others, a system of "separateness but interdependence, autonomy but reciprocity." The undue burden or substantial interference must be proven beyond a reasonable doubt [See *Id.*, 531 N.W.2d at 36, 40; footnotes and citations omitted.]

In another case involving an alleged intrusion of the legislative branch into judicial functions, the Wisconsin Supreme Court stated:

...To determine whether legislation unconstitutionally intrudes upon judicial power and therefore violates the separation of powers doctrine, this court developed a three-part test. We must first determine whether the subject matter of the statute is within the powers constitutionally granted to the legislature. The second inquiry is whether the subject matter of the statute falls within powers constitutionally granted to the judiciary. If the subject matter of the statute is within the judiciary's constitutional powers but not within powers constitutionally granted to either the legislature or executive branch, the subject matter is within the judiciary's core zone of exclusive power. Any exercise of power by the legislature or executive branch within such an area is an unconstitutional violation of the separation of powers doctrine. The judiciary may recognize such an exercise of power but only as a matter of comity and courtesy, not as an acknowledgement of power.

If the subject matter of the statute is within the powers constitutionally granted to the judiciary and the legislature, the statute is within an area of shared powers. Such a statute is constitutional if it does not unduly burden or

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pg 3)

substantially interfere with another branch. [See *State v. Horn*, 226 Wis. 2d 637, 594 N.W.2d 772, 776-7 (1999); citations omitted.]

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If you have any questions,
please contact
me.

Robert Nelson
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: robert.nelson@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2486/P1dn

RPN:sac:jf

July 22, 2013

Please review the ****notes that I added after some items in the draft where I had some questions.

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If the subject matter of the statute is within the powers constitutionally granted to the judiciary and the legislature, the statute is within an area of shared powers. Such a statute is constitutional if it does not unduly burden or substantially interfere with another branch. [See *State v. Horn*, 226 Wis. 2d 637, 594 N.W.2d 772, 776-7 (1999); citations omitted.]

If you have any questions, please contact me.

Robert Nelson
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: robert.nelson@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2486/P1
RPN:sac:jf

2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 895.527 (1); *to amend* 895.527 (3) and
2 895.527 (4); and *to create* 895.527 (1) (a), 895.527 (8), 895.527 (9), 895.527 (10),
3 895.527 (11), 895.527 (12) and 895.527 (13) of the statutes; **relating to:**
4 liability, immunity, and closure of sport shooting ranges.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 895.527 (1) of the statutes is renumbered 895.587 ^{895.527} (1) (intro.) and
6 amended to read:
7 895.527 (1) (intro.) In this section, ~~“sport;~~
8 (b) “Sport shooting range” means an area designed and operated for the use and
9 discharge of firearms.

1 **SECTION 2.** 895.527 (1) (a) of the statutes is created to read:

2 895.527 (1) (a) “Clear and immediate safety hazard” means an imminent
3 danger to the public, which is an immediate and real threat of harm, and which could
4 reasonably be expected to cause death or serious physical injury to an individual, as
5 determined by a National Rifle Association range technical team advisor, based on
6 the criteria established in the National Rifle Association Range Book.

7 **SECTION 3.** 895.527 (3) of the statutes is amended to read:

8 895.527 (3) A person who owns or operates a sport shooting range is not subject
9 to an action for nuisance or to any state or local zoning conditions or rules, including
10 those related to noise or nonconforming use and no court may enjoin or restrain the
11 operation or use of a sport shooting range on the basis of noise, non-conforming use,
12 or any other state or local zoning condition or rule.

6 ****NOTE: The state issues rules while the federal government issues regulations,
so I removed the reference to “regulation” because it is not appropriate.

13 **SECTION 4.** 895.527 (4) of the statutes, as affected by 2013 Wisconsin Act 35,
14 is amended to read:

15 895.527 (4) Any sport shooting range that exists on July 16, 2013, may continue
16 to operate as a sport shooting range at that location notwithstanding any zoning
17 ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7), if the sport
18 shooting range is a lawful use or a legal nonconforming use under any zoning
19 ordinance enacted under s. 59.69, 59.692, 60.61, 60.62, 61.35 or 62.23 (7) that is in
20 effect on July 16, 2013. The operation of the sport shooting range continues to be a
21 lawful use or legal nonconforming use notwithstanding any expansion of, or
22 enhancement or improvement to, the sport shooting range.

23 **SECTION 5.** 895.527 (8) of the statutes is created to read:

owner of a S.S.R. or of any

1 895.527 (8) Any public or private owner, operator, employee, agent, contractor,
 2 customer, lender, insurer, ~~or~~ *or if the owner or operator of a S.S.R. and any* user of a sport shooting range is immune from civil
 3 liability in any action commenced by the state or its political subdivisions, or by a
 4 special purpose district, for any claims related to the use, release, placement,
 5 deposition, or accumulation of any projectiles ^{on} in or under the sport shooting range
 6 or other contiguous real property over which the sport shooting range has an
 7 easement, leasehold, or other legal right to use.

****NOTE: I added the word "contiguous" to limit the immunity to those properties next to the sport shooting range. I am also concerned about the language "the sport shooting range has an easement...". Can a sport shooting range have an easement, or does the owner of a sport shooting range have an easement, leasehold, etc.?

8 SECTION 6. 895.527 (9) of the statutes is created to read:

an owner or operator of

9 895.527 (9) (a) A sport shooting range that is in compliance with generally
 10 accepted sport shooting range performance standards may not be forced to
 11 permanently close or permanently cease any activity related to the primary use of
 12 the range unless a circuit court finds that the range or activity is found to be a clear
 13 and immediate safety hazard.

****NOTE: The definition of "clear and immediate safety hazard" requires a determination by an NRA advisor, while this paragraph requires a court determination and the next paragraph requires a determination by a law enforcement agency. I am not sure how to reconcile these.

owner agent or ecc

14 (b) If there is an incident reported to the operator of the sport shooting range
 15 of a clear and immediate safety hazard at a sport shooting range involving projectiles
 16 leaving the the sport shooting range, the operator shall immediately report the
 17 incident to the local law enforcement agency. That portion of the sport shooting
 18 range alleged to have been related to the projectiles leaving the the sport shooting
 19 range may be closed for up to 72 hours, at the discretion of the law enforcement
 20 agency, while the law enforcement agency completes its investigation of the incident.

1 The law enforcement agency may consult a National Rifle Association range
2 technical team advisor when determining if a clear and immediate safety hazard
3 existed at the sport shooting range. If the law enforcement agency determines that
4 a clear and immediate safety hazard existed at the sport shooting range, the agency
5 shall refer the matter to the district attorney, who shall determine if a court action
6 shall be commenced to temporarily close that portion of the sport shooting range that
7 has the alleged clear and immediate safety hazard. The remaining balance of the
8 sport shooting range may remain open if a portion of the sport shooting range is
9 ordered closed.

****NOTE: I had to add some language because it was unclear who had the authority
to temporarily close a portion of the range. OK?

10 (c) In an action brought in circuit court to permanently close a sport shooting
11 range that is in compliance with generally accepted sport shooting range
12 performance standards or in an action brought to permanently cease any activity
13 related to the primary use of a sport shooting range, there is a rebuttable
14 presumption that the range or activity is not a clear and immediate safety hazard.

15 (d) If the operator of the sport shooting range provides evidence to the circuit
16 court that the cause of a clear and immediate safety hazard can be mitigated so as
17 to eliminate the clear and immediate safety hazard, the court shall not order the
18 permanent closure of the sport shooting range or the permanent cessation of an
19 activity found to be a clear and immediate safety hazard unless the sport shooting
20 range operator, after repeated attempts, fails to implement the mitigation necessary
21 to remove the cause of a clear and immediate safety hazard. All mitigation necessary
22 to remove the cause of a clear and immediate safety hazard may be performed ^{er in} by the
23 most practical and least expensive solution, as recommended by a National Rifle

1 Association range technical team advisor, based on criteria established in the
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3 (e) A circuit court may grant a permanent injunction only against a particular
4 activity at a sport shooting range or against a particular person ^{who uses the S. range and may not} ~~instead of~~
5 permanently closing a sport shooting range, unless the court finds that the
6 remaining operations of the sport shooting range also pose a clear and immediate
7 safety hazard and the range operator has been given every reasonable opportunity
8 to correct the hazard. Any sport shooting range that is permanently closed by court
9 order under this subsection may reopen upon satisfying the court that issued the
10 order that the clear and immediate safety hazard has been remedied.

11 **SECTION 7.** 895.527 (10) of the statutes is created to read:

12 895.527 (10) (a) A sport shooting range, an operator, owner, officer or board
13 member of a sport shooting range, and any National Rifle Association range
14 technical team advisor that provided recommendations regarding the operation of
15 a sport shooting range, are immune from any civil action based solely on the
16 negligent action of a user of the sport shooting range.

17 (b) The operator of a sport shooting range shall refer any criminal negligent use
18 of a sport shooting range ^{that may constitute criminal negligence, as defined in 1.939.25} to the local law enforcement agency for possible charges
19 against the individual who allegedly commits the crime.

20 (c) Any person who provides a firearms training course in good faith at a sport
21 shooting range is immune from civil liability for any act or omission related to the
22 course if the course is approved by a national or state organization.

****NOTE: Is there any way to limit or define what types of national or state
organizations can provide firearm training course approval?

23 **SECTION 8.** 895.527 (11) of the statutes is created to read:

895.527 (11) This section does not impair or diminish the private property rights of owners of property adjoining a sport shooting range.

SECTION 9. 895.527 (12) of the statutes is created to read:

895.527 (12) (a) Within 90 days after the effective date of this subsection [LRB inserts date], all claims by the state or its political subdivisions, by a special purpose district, or by any other person, related to the operation or safety at a sport shooting range, pending in court or an administrative agency, including actions based on noise, zoning, or nonconforming use, shall be dismissed without prejudice by the court or administrative agency. The dismissal of a claim under this paragraph shall not effect the defendant's cause of action for damages, reasonable attorney fees, or costs.

(b) If an action is commenced in violation of this section, the court shall order the governmental body or person who commenced the action to pay all of the defendant's expenses resulting from the commencement of the action.

SECTION 10. 895.527 (13) of the statutes is created to read:

895.527 (13) Any official, agent, or employee of the state or its political subdivisions, or of a special purpose district, while he or she was acting in his or her official capacity and within the scope of his or her employment or office, who willfully and maliciously violates this section or who is party to bringing an action in violation of this section is guilty of a Class A misdemeanor.

(END)

Conversation w/ Bob Welch

819-0150

my suggestion -

* entity owns land; use "owner or operator" uniformly

p.3 → No need to make any reconciliations on p.3 (2nd NOTE)
— cast notes finding that ~~state~~ verifies that defined
state exists
— same with law enforcement

p.5 / Leave as is
NOTE